

JEOW FONG MEI (F)

a

v.

CHONG MEE YOKE (F)

COURT OF APPEAL, KUALA LUMPUR

DATO' HJ. ABDUL MALEK BIN HJ. AHMAD JCA

b

DATO HJ. ABU MANSOR BIN ALI JCA

DATO' N.H. CHAN JCA

[CIVIL APPEAL NO. W-02-116-95]

19 DECEMBER 1995

CONTRACT: *Sale and purchase agreement - Terms - Dispute - Final date for payment of balance of purchase price - Purchaser given 3 plus 2 calendar months to make payment of balance sum - Computation of time - Principles - Expiry of first period and commencement of extension period - Whether could fall on the same day - Extension period - Whether to begin only a day after expiry of first period.*

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WORDS & PHRASES: *"Calendar month" - Definition.*

By a sale and purchase agreement dated 11 August 1992, the plaintiff agreed to purchase from the defendant a double storeyed link house for RM144,500. The plaintiff paid a deposit of 10% of the purchase price and undertook to pay the balance sum, within a specified period after the necessary approval had been obtained from the authority. The specified period was exhibited in clause 4 of the agreement, which was that *"the plaintiff had 3 months as from the date of receipt of notification (of approval from the authority)"* to pay the balance of the purchase price, failing which *"the defendant shall grant the plaintiff an extension of two months to settle the outstanding balance"*. The plaintiff thus had 3 plus 2 calendar months from the receipt of the notification to make payment of the balance of the purchase price.

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On 12 July 1993, the defendant was notified by the Pentadbir Tanah Daerah, Petaling, that her application to transfer the premises was approved. The defendant's solicitors thereupon informed the plaintiff's solicitors that, by the agreement, the dateline for payment of the balance sum would fall on 12 October 1993. This letter was received by the plaintiff's solicitors on 14 July 1993. The plaintiff did not comply, and consequently no payment was made to satisfy the purchase price by the given date, or at the end of the extension period. In the event, on 13 December 1993, the defendant terminated the agreement and accordingly sought to forfeit the 10% deposit as liquidated damages as agreed.

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Before the learned Judicial Commissioner the plaintiff contended that since receipt of the letter was on 14 July 1993, the time for payment expired only on 14 December 1993, and the plaintiff therefore, could still make payment

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- a* on that date. That being the case, the purported termination of the agreement by the defendant by her letter of 13 December 1993, according to the plaintiff, was clearly premature. The defendant argued that the computation had to be split up into two parts, namely, the first period of three months, for which the expiry date was 13 October 1993, and the extended period for which the expiry
- b* date was 12 December 1993. It was hence argued that the termination letter, having been dated 13 December 1993, was valid and could not be premature. In making the computation he did, the Judicial Commissioner ruled that on the facts, 13 October represented both the date of expiry of the first period as well as the commencement date of the two-month extension, and in the event,
- c* the agreement was ruled properly terminated by the notice of 13 December 1993. The plaintiff appealed and the sole issue that arose was whether the learned Judicial Commissioner was right in coming to the aforesaid finding.

Held: Per Abdul Malek Ahmad JCA (N.H.Chan, Abu Mansor Ali JJCA concurring):

- d* [1] The term calendar month is a legal and technical term. The meaning of this phrase is that, in computing time by such months, the time must be reckoned by looking at the calendar and not by counting days. So that, as an example, one calendar month's imprisonment is to be calculated
- e* from the day of imprisonment to the day numerically corresponding to that day in the following month less one.
- [2] The contention that the extension commenced on 13 October 1993 is clearly untenable. It goes against common sense and logic for one period to end and another to commence on the same day. That would certainly go
- f* against the principles of computation because of overlapping.
- [3] In the instant case, bearing in mind the principles applicable, the first period of 3 months would end on 13 October 1993. But payment, as correctly stated by the learned Judicial Commissioner, could still be made on that date. On that premise the extension period could not commence on that
- g* date, as the expiry would only be at midnight of that day. The commencement of the extension period, hence, could only be on 14 October 1993. The learned Judicial Commissioner was therefore in error when in computing the time she took 13 October 1993 both as the date of expiry of the three month period and the commencement date of the
- h* two month extension.
- [4] Since the extension would only commence on 14 October 1993 and end on 13 December 1993, the defendant's termination letter dated 13 December 1993 was one day too early as the plaintiff could still pay up to midnight on that date. The termination was obviously wrong and
- i* invalid.

[Appeal allowed. Order accordingly].

Other sources referred to:

Words and Phrases Legally Defined, 2nd Edn., p. 291

[Bahasa Malaysia Translation of Headnotes]

KONTRAK: *Perjanjian Jualbeli - Terma-terma - Pertikaian - Tarikh terakhir bagi pembayaran baki harga belian - Pembeli diberi 3 dan 2 bulan kalendar untuk membuat pembayaran jumlah baki - Perhitungan masa - Prinsip - Perluputan tempoh pertama dan permulaan tempoh lanjutan - Samada ianya boleh jatuh pada hari yang sama - Tempoh lanjutan - Samada harus dimulakan hanya satu hari selepas perluputan tempoh pertama.*

PERKATAAN & ISTILAH: “Bulan kalendar” - Penakrifan.

Melalui satu perjanjian jualbeli bertarikh 11 Ogos 1992, plaintif telah bersetuju untuk membeli daripada defendan sebuah rumah berbandung dua tingkat bagi jumlah sebanyak RM144,500. Plaintif telah membayar deposit sebanyak 10% dari harga belian dan mengakujani untuk membayar jumlah baki, dalam tempoh yang ditentukan, selepas kelulusan yang perlu diperolehi daripada pihak berkuasa. Tempoh yang ditentukan itu telah diekshibitkan dalam fasal 4 perjanjian tersebut, yang mana adalah bahawa “plaintif mempunyai 3 bulan bermula daripada tarikh penerimaan pemberitahuan (tentang kelulusan dari pihak berkuasa)” untuk membayar baki harga belian, kegagalan yang mana akan menyebabkan “defendan akan memberikan plaintif lanjutan selama 2 bulan untuk menjelaskan baki yang masih belum jelas itu”. Plaintif dengan itu mempunyai 3 dan 2 bulan kalendar daripada tarikh penerimaan pemberitahuan tersebut untuk membuat pembayaran baki harga belian.

Pada 12 Julai 1993, defendan telah diberitahu oleh Pentadbir Tanah Daerah, Petaling, bahawa permohonannya telah diluluskan. Peguamcara defendan dengan itu telah memaklumkan kepada peguamcara plaintif bahawa, menurut perjanjian tarikh tamat bagi pembayaran jumlah baki tersebut akan jatuh pada 12 Oktober 1993. Surat ini telah diterima oleh peguamcara plaintif pada 14 Julai 1993. Plaintif telah tidak mematuhi, dan oleh kerana itu tidak terdapat pembayaran dibuat bagi menjelaskan harga belian pada tarikh yang telah diberikan itu, atau pada penghujung tarikh lanjutan tersebut. Pada 13 Disember 1993, defendan telah menamatkan perjanjian tersebut dan berikutan itu berusaha untuk merampas deposit sebanyak 10% sebagai ganti rugi jumlah tertentu.

Dihadapan Pesuruhjaya Kehakiman plaintif menegaskan bahawa oleh kerana penerimaan surat tersebut adalah pada 14 Julai 1993, tempoh masa untuk pembayaran hanya luput pada 14 Disember 1993, dan plaintif dengan itu, masih boleh membuat pembayaran pada tarikh terkemudian itu. Dalam keadaan yang sedemikian, penamatan perjanjian tersebut yang dikatakan oleh defendan melalui suratnya bertarikh 13 Disember 1993, menurut plaintif, adalah jelas pra-masa. Defendan berhujah bahawa perhitungan masa tersebut harus dipecahkan kepada

- a* dua bahagian, iaitu, tempoh pertama selama 3 bulan, di mana tarikh luputnya adalah 13 Oktober 1993, dan tempoh lanjutan di mana tarikh luputnya adalah 12 Disember 1993. Ianya dengan itu diujahkan bahawa surat penamatan tersebut, oleh kerana bertarikh 13 Disember 1993, adalah sah dan tidak boleh dikatakan pramasa. Dalam membuat perhitungan masa sepertimana yang beliau
- b* lakukan, Pesuruhjaya Kehakiman memutuskan bahawa berdasarkan fakta, 13 Oktober mewakili kedua-dua tarikh luput bagi tempoh pertama dan tarikh permulaan bagi tempoh lanjutan selama 2 bulan, dan dalam keadaan yang sedemikian, perjanjian berkenaan telah ditamatkan dengan betulnya melalui notis bertarikh 13 Disember 1993. Plaintiff telah membuat rayuan dan isu tunggal
- c* yang berbangkit adalah samada Pesuruhjaya Kehakiman betul dalam mencapai keputusan yang tersebut di atas.

Diputuskan:

Oleh Abdul Malek Ahmad HMR (N.H. Chan, Abu Mansor Ali HHMR menyetujui):

- d*
- e* [1] Terma bulan kalendar adalah terma yang sah dan teknikal. Maksud ungkapan ini adalah bahawa, dalam menghitung masa menurut bulan-bulan yang sedemikian, masa tersebut haruslah dihitung dengan melihat kalendar dan tidak dengan mengira hari. Oleh itu, sebagai satu contoh, pemenjaraan selama satu bulan hendaklah dihitung daripada hari pemenjaraan sehingga kepada hari yang bersamamaan menurut angka sehingga kepada hari itu dalam bulan yang berikutnya ditolak sehari.
- f* [2] Penegasan bahawa tempoh lanjutan bermula pada 13 Oktober 1993, adalah jelas tidak boleh dipertahankan. Ianya bertentangan dengan akal fikiran dan logik bagi satu tempoh berakhir dan satu tempoh yang lain pula bermula pada hari yang sama. Perkara ini tentunya bertentangan dengan prinsip perhitungan kerana sifat bertindih itu.
- g* [3] Dalam kes semasa ini, memikirkan tentang prinsip yang terpakai, tempoh pertama selama 3 bulan akan berakhir pada 13 Oktober 1993. Tetapi pembayaran, sepertimana yang dinyatakan dengan betul oleh Pesuruhjaya Kehakiman yang bijaksana, masih boleh dibuat pada hari itu. Berdasarkan yang sedemikian, tempoh lanjutan tidak boleh dimulakan pada tarikh tersebut, kerana tempoh lanjutan tersebut akan hanya berkuatkuasa pada
- h* tengah malam hari itu. Permulaan tempoh lanjutan dengan itu, hanyalah 14 Oktober 1993. Pesuruhjaya Kehakiman yang bijaksana dengan itu tersalah menghitung masa bilamana beliau mengambil 13 Oktober 1993 sebagai tarikh luput bagi tempoh 3 bulan itu dan juga tarikh permulaan bagi tempoh lanjutan tersebut.
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[4] Oleh kerana tempoh lanjutan tersebut akan hanya bermula pada 14 Oktober 1993 dan berakhir pada 13 Disember 1993 maka surat penamatan defendan bertarikh 13 Disember 1993 adalah satu hari lebih awal oleh kerana plaintif masih boleh membayar sehingga pada tengah malam hari tersebut. Penamatan tersebut jelas salah dan tak sah.

[Rayuan dibenarkan. Perintah sekadarnya].

JUDGMENT

Abdul Malek Ahmad JCA:

We had some difficulty in trying to convince learned Counsel for the defendant, who is the respondent in this appeal, just as she appeared having a tough time attempting to persuade us, on the issue of computation of time in relation to terms stated in a contract, and we felt that we should write a short judgment to put the matter at rest.

The originating summons had arisen out of a sale and purchase agreement pertaining to a double storeyed link house unit No. DL 15, Taman Desa Ria, Phase II, Petaling Jaya, Selangor executed on 11 August 1992 between the defendant as vendor and the plaintiff as purchaser for RM144,500.

The issue for determination is what is the final date the purchaser is required to make the payment of the balance of the purchase price. The agreement is conditional, as provided under clause 1(a), upon the vendor obtaining the written approval of the appropriate authority. Among other things, clause 2 of the agreement states that the vendor shall use her best endeavours to obtain the second consent within eight months from the date of the agreement failing which the vendor shall be entitled to an extension of one month or such further period as the parties may hereafter mutually agree to in writing.

Upon the second consent being obtained, the original copy of the same shall be deposited with the purchaser's solicitors but if the second consent is not obtained within the time specified, the agreement shall at the expiration of that period become null and void and shall cease to have any further force or effect and such sums paid by the purchaser pursuant to the provisions of the agreement shall be refunded by the vendor to the purchaser within thirty days from the expiration of time specified without any interest or costs.

Clauses 4 and 7 of the agreement are relevant and are reproduced for effect:

4. In the event that the 2nd Consent is obtained within the duration as aforesaid the Balance of the Purchase Price being MALAYSIAN RINGGIT ONE HUNDRED AND THIRTY THOUSAND AND FIFTY (\$130,050) only (hereinafter referred to as "the said Balance Purchase Price") shall be paid by the Purchaser to Messrs. Chung Chew Chan & Co., Advocates & Solicitors of No. 19A, 1st Floor, Jalan SS 2/67, 47300 Petaling Jaya (hereinafter called "the Vendor's Solicitors") as Stakeholders within three

- a* (3) months as from the date of receipt (or deemed to have receipt) of the notification by the Vendor's solicitors to the Purchaser's solicitors that the 2nd Consent is obtained (hereinafter referred to as "the Completion Date") failing which the Vendor shall grant the Purchaser an extension of Two (2) months (hereinafter referred to as "the Extended Completion Date") to settle the outstanding balance purchase price subject to the Purchaser paying interest to the Vendor at the rate of ten per centum (10%) per annum on the balance purchase price still outstanding calculated on a daily basis (hereinafter referred to as "the Interest Payment").
- b*
5. ...
- c* 6. ...
7. In the event that the said Balance Purchase Price and/or the interest payment, if any, referred to in Clause 4 are not paid as aforesaid a sum equivalent to Ten per cent (10%) of the Purchase Price shall be forfeited as liquidated damages and any sum in excess thereof paid by the purchaser to the vendor shall be refunded to the purchaser free from interest whereupon this Agreement and the present sale of the said Property shall be determined and shall have no further legal effects and neither party shall have any claim against the other save as to any antecedent breach.
- d*
- e* According to the defendant's affidavit filed on 9 June 1994, the letter from the Pentadbir Tanah Daerah, Petaling dated 12 July 1973 had notified the defendant that her application to transfer the premises to the plaintiff had been approved by the Pihak Berkuasa Negeri. Consequent thereto, the defendant's solicitors had informed the plaintiff's solicitors that the dateline for the payment of the balance of the purchase price would fall on 12 October 1993. The
- f* stamping on the letter indicates that it was received by the purchaser's solicitors on 14 July 1993. This date is now not disputed by the defendant.
- By clauses 4 and 7 of the agreement, it is clear that the plaintiff had three plus two calendar months from the date of receipt of the notification to make payment of the balance of the purchase price to the defendant failing which the agreement is considered determined with no further legal effect and a sum equivalent to ten per cent of the purchase price shall be forfeited as liquidated damages and any sum in excess thereof paid by the purchaser to the vendor shall be refunded to the purchaser free from interest.
- g*
- h* It is only the computation of time of the five calendar months that is causing the problem. The contention of learned Counsel for the plaintiff is that since the receipt of the letter was on 14 July 1993, the time for payment expires only on 14 December 1993 and the plaintiff could still make payment on that date. The purported termination of the agreement by the defendant's letter dated
- i* 13 December 1993 was therefore, in his view, premature.

The submission of learned Counsel for the defendant was that the computation had to be split up into two parts. For the first three months, the expiry date was 13 October 1993. When it was extended another two months, it expired on 12 December 1993. Thus, the termination letter the following day.

This argument apparently found favour with the learned Judicial Commissioner as she had concluded as follows:

According to the defendant's Counsel, applying the construction of this definition to the facts of this case, 3 months from date of receipt of the notification of the State Authority's approval by the plaintiff's solicitors, i.e. 14 July 1993 would bring us to 13 October 1993. Time for completion on the facts of this case had been extended by two months. The last date for the plaintiff to effect payment, computing it from its expiry date of 13 October 1993, was therefore 12 December 1993.

In my judgment the true construction of the agreement here is that the plaintiff was required to make final payment 3 calendar months from 14 July 1993 i.e. on or before 13 October 1993. From clause 4 of the agreement, failing completion on this date, the vendor is obliged to give a mandatory extension of 2 calendar months. The extended date of completion was therefore, 12 December 1993. It is not disputed that the plaintiff failed to effect full payment by that date. The plaintiff had clearly bound herself under the agreement to make final payment on or before the extended date of 12 December 1993. The plaintiff was clearly in breach of the agreement by reason of her failure or refusal to pay the balance of the purchase price on or before 12 December 1993. In these circumstances I hold that there was every justification for the defendant to invoke clause 7 of the agreement, to forfeit the deposit paid and consider the agreement determined and have no further legal effect. I note that upon such determination both parties have agreed that neither party shall have any claim against the other save as to any antecedent breach.

In these circumstances I accordingly dismissed the plaintiff's claim with costs.

We, however, beg to disagree. As correctly stated by learned Counsel for the defendant, the definition of "calendar month" as found in *Words and Phrases Legally Defined Second Edition* at page 291 is as follows:

Calendar month

The term a calendar month is a legal and technical term. ... The meaning of the phrase is that, in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days; and that one calendar month's imprisonment is to be calculated from the day of imprisonment to the day numerically corresponding to that day in the following month less one. *Migotti v. Colvill* [1879] 4 CPD 233 at 238. CA, per Brett LJ.

For the first three months, therefore, the period would end on 13 October 1993. But payment, as correctly stated by the learned Judicial Commissioner, can still be made on that date. On that premise, the extension period cannot

- a* commence on that date as the expiry will only be at midnight of that day. The commencement of the extension period can only be on 14 October 1993. This is where the learned Judicial Commissioner made the error in computation as she had taken 13 October 1993 both as the date of expiry of the three month period and the commencement date of the two month extension.
- b* This was when we had difficulty with the learned Counsel for the defendant. She had insisted, as wrongly concluded by the learned Judicial Commissioner, that the extension commenced on 13 October 1993. In our considered opinion, it goes against common sense and logic for one period to end and another to commence on the same day. That would certainly go against the principles of
- c* computation of time because of overlapping. We had even told learned Counsel for the defendant that in a case where there were eleven one month extensions, it would end up eleven days short of a calendar year if we had followed her arguments and the conclusion of the learned Judicial Commissioner.
- d* Since we found that the extension would only commence on 14 October 1993 and end on 13 December 1993, the defendant's termination letter dated 13 December 1993 was certainly one day too early as the plaintiff could still pay up to midnight on that date.
- e* As such, the termination was obviously wrong. We had accordingly allowed the appeal below and granted the order in terms of prayer (a) of the originating summons by declaring that the defendant's letter of termination dated 13 December 1993 was not valid.
- f* **Abu Mansor Ali JCA:**
- I have had the opportunity of reading the draft judgment of my brother, Dato' Hj. Abdul Malek bin Haji Ahmad, JCA in this matter to which I concur.
- N.H. Chan JCA:**
- g* In this matter we have allowed the appeal of the plaintiff for the reasons stated in the judgment of my Lord Abdul Malek Hj. Ahmad JCA with which I have agreed.

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